FILED
JAMES BONINI
CLERK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

07 NOV -8 PM 2:59

| | |
|---|---|
| DIANE B. CALLAHAN Individually and On Behalf of All Others Similarly Situated,<br><br>Plaintiffs,<br><br>vs.<br><br>LCA-VISION INC., E. ANTHONY WOODS, STEVEN C. STRAUS, ALAN H. BUCKEY and CRAIG P.R. JOFFE,<br><br>Defendants. | Civil Action No. ____________<br>Judge (____________________)<br><br>J. BECKWITH<br>1:07CV941<br><br>**CLASS ACTION COMPLAINT FOR VIOLATION OF THE FEDERAL SECURITIES LAWS**<br><br>(JURY TRIAL DEMANDED) |

## INTRODUCTION

1. This is a securities class action on behalf of all persons who purchased or otherwise acquired the common stock of LCA-Vision Inc. ("LCA" or the "Company") between February 12, 2007 and November 2, 2007 (the "Class Period"), against LCA and certain of its officers and/or directors for violations of the Securities Exchange Act of 1934 ("1934 Act").

2. LCA is engaged in the provision of fixed-site laser vision correction services at its LasikPlus vision centers. The Company's vision centers provide the staff, facilities, equipment and support services for performing laser vision correction that employ laser technologies to help correct nearsightedness, farsightedness and astigmatism. LCA is headquartered in Cincinnati, Ohio.

3. During the Class Period, defendants issued materially false and misleading statements regarding the Company's business and financial results. As a result of defendants' false statements, LCA stock traded at artificially inflated prices during the Class Period, reaching a high of $50.56 per share in July 2007, before it fell to as low as $15.41 per share on November 2, 2007.

4. On February 12, 2007, LCA issued a press release announcing a 26% increase in revenue growth and 13% EPS growth for the quarter and 34% revenue growth and 22% EPS growth for the year. LCA provided EPS guidance of $2.05 to $2.15 for 2007.

5. On April 18, 2007, LCA announced it would restate its financial statements for 2004, 2005 and 2006, reducing revenue by $18 million in 2006, after the SEC questioned its revenue recognition for extended warranties. The impact on LCA's stock price from this announcement was just about $1 per share, as the release also included assurances that earnings were still on track for 2007:

> "We plan to limit or eliminate the use of separately priced extended warranties in the near future," added Mr. Straus. "Therefore, we expect the impact of the restated financial statements will be to increase revenues and pretax income in future periods as the deferred revenue is amortized back into income. At present, we are comfortable with our 2007 revenue guidance growth of 20 to 25 percent compared with 2006, and our 2007 earnings per share guidance of $2.05 to $2.15."

6. Then, on July 31, 2007, before the market opened, LCA issued a press release entitled "LCA-Vision Reports 16% Revenue Growth for the Second Quarter of 2007; Full-Year 2007 Financial Guidance Revised," and in a surprise announcement retracted the Company's statements through the first seven months of the year (including the statement in April) that it would earn $2.05 to $2.15 for the year. The press release stated in part:

> LCA-Vision Inc., a leading provider of laser vision correction services under the Lasik*Plus* brand, today announced financial and operational results for the three months and six months ended June 30, 2007.
>
> Second Quarter 2007 Financial and Operational Results
>
> – Revenues increased 16% to $69.7 million from $60.3 million in the second quarter of 2006.
>
> – Procedure volume increased 3% to 48,668 from 47,308 in the second quarter of 2006.
>
> – Net income and earnings per diluted share were $7.4 million and $0.36, compared with $8.0 million and $0.37 in the second quarter of 2006.

– Cash provided by operations grew 14% to $33.7 million for the six months ended June 30, 2007 from $29.6 million for the six months ended June 30, 2006.

– Opened five new Lasik*Plus* vision centers in Little Rock, Arkansas; Colorado Springs, Colorado; San Diego, California; Oklahoma City, Oklahoma; and Scarsdale, New York. In the first six months of 2007, the company opened nine vision centers, compared with three opened in the first six months of 2006.

"In the second quarter of 2007, we reported 16% revenue growth with a modest increase in procedure volume," said Steven C. Straus, LCA-Vision's Chief Executive Officer. "We are not satisfied with our financial and operational results, primarily due to the decline in same-store procedure volume and rising patient acquisition costs. We expect several factors to re-accelerate earnings and revenue growth in the second half of this year. Among these, we are implementing a number of major marketing initiatives that we believe will provide improved performance in the second half of this year and into 2008, with the largest impact expected in the first quarter of 2008."

"In some of our more established markets, we are remodeling or relocating our LasikPlus vision centers with an aim toward improving same-store performance. So far this year, we have remodeled ***nine vision centers and have plans to remodel five more***, and will relocate two vision centers by the end of this year," added Mr. Straus. "We also expect to add new managed care provider agreements in the second half of this year. These new provider agreements should drive incremental procedure volume in existing markets and help launch our targeted new markets."

Mr. Straus continued, "Opening new vision centers is a component of our future growth and profitability. During the first six months of 2007, we opened nine LasikPlus vision centers compared with three openings in the first six months of 2006. Earlier this month, we announced the opening of a LasikPlus vision center in Fresno, California. Year-to-date, we have opened 10 new vision centers, which represents a 17% increase in our vision center base since December 31, 2006. We are on track to meet our goal of opening a total of 12 to 15 vision centers this year, and remain focused on strategically expanding the LasikPlus footprint throughout the United States, while continuing to deliver high-quality results to our patients at an affordable price."

Revenues and Operating Income

Revenues grew 16% to $69.7 million in 2007's second quarter from $60.3 million in 2006's second quarter. Total procedure volume increased 3% in 2007's second quarter to 48,668 from 47,308 procedures performed in 2006's second quarter. In the second quarter of 2007, same-store procedure volume at vision centers located in the United States decreased by approximately 8% from the second quarter of 2006. Operating income was $10.0 million in 2007's second quarter compared

with $12.4 million in 2006's second quarter. Operating income for the second quarter of 2007 was lower than the second quarter of 2006 primarily as a result of 16 more vision centers in operation as of June 30, 2007, compared with June 30, 2006, and higher marketing expenditures to support new and existing markets.

Net Income and Earnings Per Share

Second quarter 2007 net income and earnings per diluted share were $7.4 million and $0.36, compared with $8.0 million and $0.37 in the second quarter of 2006.

* * *

Outlook

LCA-Vision is revising its earnings and revenue guidance for the full-year of 2007. The company now expects earnings per diluted share to be in the range of $1.90 to $2.00, and revenues between $308.0 million to $315.0 million, which includes the impact of deferred revenues. For the third quarter of 2007, marketing spend is expected to be approximately $17.5 million.

7. After these results were issued, on July 31, 2007, LCA's stock collapsed to close at $35.51 per share, a decline of 17%, on volume of 3.5 million shares. The stock dropped further on August 1, 2007 to $33.40 per share.

8. The Motley Fool Web site said it best – investors were "blindsided":

Egads, was that ever bad!

In last week's Foolish Forecast for Q2 earnings at LCA-Vision, I was puzzled that analysts predicted both double-digit sales growth and a double-digit earnings decline for the LASIK specialist. It just didn't make sense, especially in light of CEO Steven Straus's recent assurance that the company was on track to achieve 20%-plus sales growth and better than 50% profit growth this year. Something was amiss.

And how. Reviewing Tuesday's results, it appears that the analysts ultimately weren't pessimistic ***enough***. The numbers were simply abysmal:

- Sales rose only 6% (or 16%, based on management's restatement of Q2 2006 results).
- Procedure volume increased an anemic 3%, with all of the growth coming from new store openings. Existing stores dragged down the final number with an 8% drop in same-store sales.

– Per-share profits fell by a penny to $0.36.

* * *

The good news

Even the good news was bad at LCA this quarter. Straus pointed out that while profits were down, cash flow was up 14%. Good news? Not really. The 14% number was for year-to-date cash flow, and it relied heavily on last quarter's 17% growth. In Q2, cash flow actually performed worse than GAAP profits – down 35% year over year from last year's $8 million.

The not-yet news

Putting it all together, LCA decided to lower its forward earnings guidance by roughly 7%, to a midpoint of $1.95 per share. (The last time we checked, the midpoint was $2.10.) How confident should you be that LCA will meet its latest and less-than-greatest target?

Well, LCA has earned $0.90 per share already, but the year's more than half over. So unless management fulfills its promise to reenergize growth next quarter, I'd put the likelihood of hitting the latest earnings target somewhere south of 50%.

9. However, investors were not informed of the true state of affairs of the Company until October 30, 2007, when, before the market opened, LCA issued a press entitled "LCA-Vision Reports Third Quarter 2007 Financial Results; Quarterly Revenue Grows 34% and Procedure Volume Increases 5% Company Revises Full-Year 2007 Financial Guidance." In this press release, the Company shocked investors by reporting that the Company's fourth quarter earnings per diluted share was unknown, but significantly below the previous estimate of $0.27 reported, and moreover that the Company was suspending revenue guidance—***indefinitely***. The press release stated in part:

- Revenues increased 34% to $74.6 million from $55.8 million; adjusted revenue increased 13% to $66.9 million from $59.3 million.

- Same-store revenue increased 20%; adjusted same-store revenue was essentially flat.

- Procedure volume increased 5% from 44,547 to 42,539.

- Operating income increased 107% to $14.1 million from $6.8 million; adjusted operating income decreased 28% to $7.2 million from $9.9 million.

- Net income and earnings per diluted share were $10.0 million and $0.51, compared with $5.3 million and $0.25.

- Opened two new LasikPlus centers in Fresno, California and Boise, Idaho.

* * *

LCA-Vision is providing adjusted revenue and operating income to investors as a means of measuring performance that adjusts for the non-cash impact of the accounting for separately priced extended warranties. A reconciliation of revenue and operating income as reported in accordance with Generally Accepted Accounting Principles (GAAP) is provided on the last page of this news release. Management utilizes this information as a means of measuring performance that adjusts for the non-cash impact of the accounting for separately priced extended warranties. Management believes this information is more reflective of operating performance, and that including this additional disclosure is meaningful to investors for the same reason.

Commenting on the company's financial and operational results, Steve Straus, LCA-Vision's Chief Executive Officer, said, "Our ability to obtain a higher average price per procedure during the quarter favorably offset weaker same-store procedure volume as we continue to face headwinds due to softness in consumer discretionary spending and tightening credit markets."

Mr. Straus continued, "Third quarter marketing spending increased 33% over last year. The increase in the number of pre-operative eye exams scheduled during the quarter was consistent with the increase in growth in marketing expenditures, which indicates that there remains a significant amount of appeal to laser vision correction and LasikPlus. However, a more cautious consumer resulted in slower growth in procedure volume. During the quarter, we commissioned a research firm to survey consumers who did not attend their pre-operative eye exam to find out why they missed their appointment. The survey results indicated these consumers were not ready to commit to getting the procedure performed due to convenience and cost, but they were still interested in LasikPlus. We are working diligently to reach out to these consumers so they will return to LasikPlus when they are ready to have the procedure performed.

* * *

"Earlier today, we announced plans to rollout the IntraLase femtosecond technology in our LasikPlus vision centers throughout the United States," added Mr. Straus. "Including 18 units that were installed over the past month, we currently offer IntraLase at 26 of our LasikPlus vision centers. We expect to add approximately eight locations per month, and to complete the installation within the first half of 2008. The implementation and national rollout of IntraLase in our LasikPlus vision centers supports our commitment to offer patients advanced technological choices at

an affordable price. In addition to increasing our average price per procedure and driving incremental revenue, we believe that the IntraLase technology may also help to reverse the trend toward more surface ablation treatments."

*   *   *

Outlook

Discussing the firm's outlook, Mr. Straus said, "While we remain confident in the company's long-term growth prospects, in the near-term we face an uncertain business environment. Notably, ***the percentage of pre-operative eye exams we are able to convert into treated patients has declined and is impacting our ability to accurately forecast conversion rates.*** At the same time, macroeconomic trends and consumer sentiment are weakening, which gives us concern for the short-term. Given these trends and uncertainties, ***we now expect that fourth quarter 2007 earnings per diluted share will be significantly below the $0.27 we reported in the fourth quarter of 2006, and we are suspending revenue guidance.*** We remain committed to opening a total of 12 to 15 vision centers in 2007. We expect to invest approximately $16.5 million on marketing in the fourth quarter. We will expand the use of the IntraLase technology in the coming months, which should help increase average procedure price."

Emphasis added.

10. The true facts, which were known by defendants but concealed from the investing public during the Class Period, were as follows:

(a) The Company lacked requisite internal controls, and, as a result, the Company's projections and reported results issued during the Class Period were based upon defective assumptions about the Company's marketing budget and deferred revenue;

(b) The Company's existing stores were not showing growth and volumes were down 8% and any overall growth was being derived solely from new store openings. ;

(c) The Company did not have an effective marketing strategy and mix to target consumers and drive existing store sales. In fact, the Company's marketing was so ineffective it resorted to studying consumers preferences to attempt to discern why preoperative eye exams were not translating into surgical procedures, treated patients, and revenue for the Company;

(d) The Company did not possess the technological advancements necessary to compete in the marketplace and attract consumers at the levels it needed to meet its earnings per share guidance and Wall Street estimates. The Company did not publicly acknowledge its need to rollout the IntraLase femtosecond technology until it cut fourth quarter earnings per share estimates and suspended guidance. As a result, the Company's projections issued during the Class Period about its forecasted 2007 EPS were at a minimum reckless.

11. As a result of defendants' false statements, LCA's stock traded at inflated levels during the Class Period. However, after the above revelations seeped into the market, the Company's shares were hammered by massive sales, sending them down almost 70% from their Class Period high.

## JURISDICTION AND VENUE

12. Jurisdiction is conferred by §27 of the 1934 Act. The claims asserted herein arise under §§10(b) and 20(a) of the 1934 Act and SEC Rule 10b-5.

13. (a) Venue is proper in this District pursuant to §27 of the 1934 Act. Many of the false and misleading statements were made in or issued from this District.

(b) LCA's principal executive offices are located at 7840 Montgomery Road, Cincinnati, Ohio.

## THE PARTIES

14. Plaintiff Diane B. Callahan purchased LCA common stock as described in the attached certification and was damaged thereby.

15. Defendant LCA is engaged in the provision of fixed-site laser vision correction services at its LasikPlus vision centers. The Company's vision centers provide the staff, facilities, equipment and support services for performing laser vision correction that employ laser technologies to help correct nearsightedness, farsightedness and astigmatism. LCA's vision centers are supported

mainly by independent, board-certified ophthalmologists and credentialed optometrists, as well as other health care professionals. The ophthalmologists perform the laser vision correction surgery in the Company's vision centers, and either ophthalmologists or optometrists conduct pre-procedure evaluations and post-operative follow-ups in-center. LCA is headquartered in Cincinnati, Ohio.

16. Defendant E. Anthony Woods ("Woods") is, and at all relevant times was, a director and Chairman of the Board of the Company. During the Class Period, Woods was responsible for the Company's false financial statements.

17. Defendant Steven C. Straus ("Straus") is, and at all relevant times was, a director and Chief Executive Officer ("CEO") of the Company. During the Class Period, Straus was responsible for the Company's false financial statements.

18. Defendant Alan H. Buckey ("Buckey") is, and at all relevant times was, Executive Vice President, Finance and Chief Financial Officer ("CFO") of LCA. During the Class Period, Buckey was responsible for the Company's false financial statements.

19. Defendant Craig P.R. Joffe ("Joffe") was, at all relevant times, a director, Chief Operating Officer ("COO") and General Counsel of LCA, and additionally served as Interim CEO until November 2006.

20. Defendants Woods, Straus, Buckey and Joffe (the "Individual Defendants"), because of their positions with the Company, possessed the power and authority to control the contents of LCA's quarterly reports, press releases and presentations to securities analysts, money and portfolio managers and institutional investors, *i.e.*, the market. They were provided with copies of the Company's reports and press releases alleged herein to be misleading prior to or shortly after their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions with the Company, and their access to material non-public information

available to them but not to the public, Woods, Straus, Buckey and Joffe knew that the adverse facts specified herein had not been disclosed to and were being concealed from the public and that the positive representations being made were then materially false and misleading. Woods, Joffe, Buckey and Straus are liable for the false statements pleaded herein.

**FRAUDULENT SCHEME AND COURSE OF BUSINESS**

21. Defendants are liable for: (i) making false statements; or (ii) failing to disclose adverse facts known to them about LCA. Defendants' fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of LCA common stock was a success, as it: (i) deceived the investing public regarding LCA's prospects and business; (ii) artificially inflated the price of LCA's common stock; (iii) permitted defendants to receive annual incentive bonuses which were based on LCA's reported pre-tax income in both 2006 and 2007; and (iv) caused plaintiff and other members of the Class to purchase LCA common stock at inflated prices.

**BACKGROUND**

22. LCA engages in the development and operation of fixed-site laser vision correction services at its LasikPlus vision centers. The Company's vision centers provide staff, facilities, equipment and support services for performing laser vision correction that employ laser technologies to correct nearsightedness, farsightedness and astigmatism. These vision centers are supported primarily by independent ophthalmologists and optometrists, as well as other healthcare professionals. Ophthalmologists perform the laser vision correction surgery in vision centers, and either ophthalmologists or optometrists conduct pre-procedure evaluations and post-operative follow-ups in-center.

23. On September 29, 2006, LCA pre-announced disappointing 2006 results, reducing 2006 EPS to the range of $1.60 to $1.70, compared with prior guidance of $1.80 to $1.90.

24. After this disclosure, LCA stock dropped from above $41 per share to below $31 per share and then remained in the low $30s through most of October 2006. Defendants sought to re-inflate LCA's stock price to show that their growth plan was working.

25. On October 24, 2006, LCA issued a press release entitled "LCA-Vision Grows Revenues 26% and Increases Procedure Volume 24%." The press release stated in part:

> LCA-Vision Inc., a leading provider of laser vision correction services under the LasikPlus brand, today announced financial and operational results for the three months and nine months ended September 30, 2006.
>
> Financial & Operational Highlights
>
> – Third quarter 2006 revenues grew 26% to approximately $59.3 million from approximately $47.0 million in the third quarter of 2005.
>
> – Third quarter 2006 same-store revenues at vision centers located in the Untied States increased 6% over the third quarter of 2005.
>
> – Third quarter 2006 procedure volume increased 24% to 42,539 from 34,187 in the third quarter of 2005.
>
> – Third quarter 2006 net income and earnings per share were approximately $7.2 million and $0.34 compared with approximately $7.9 million and $0.37, respectively, in the third quarter of 2005.
>
> – Cash provided by operations grew 48% to approximately $48.3 million for the nine months ended September 30, 2006 from approximately $32.6 million for the nine months ended September 30, 2005.
>
> – Successfully opened five new LasikPlus vision centers during the third quarter of 2006 in Sugar Land, Texas; Denver, Colorado; New Haven, Connecticut; Dallas, Texas; and Oakdale, Minnesota. LasikPlus vision centers are now located in 44 markets in 28 states.
>
> Craig Joffe, LCA-Vision's Interim Chief Executive Officer and Chief Operating Officer commented, "Third quarter revenue growth was solid at 26% over the third quarter of 2005, in a market that has been flat to down for the past four quarters. Although we were able to generate strong year-over-year increases in both revenue and procedure volume, we did not achieve the higher level of same-store revenue growth that we have been accustomed to delivering over the last three years. Driven primarily by less effective direct-to-consumer marketing, the softening in our same-store growth was most pronounced in a number of our older markets."

Mr. Joffe continued, "While we made changes to our marketing plan throughout the third quarter, the changes did not yield the improvements we expected to realize later in the quarter. We have since identified a number of opportunities in our direct-to-consumer marketing strategies, and are working diligently to adjust the media mix and enhance the message we are delivering to our consumers based on our learnings."

"We successfully opened five new LasikPlus vision centers during the third quarter, and last week announced the opening of a LasikPlus vision center in Lexington, Kentucky," added Mr. Joffe. "Year-to-date, we have opened nine new vision centers, and now own and operate 58 LasikPlus vision centers in the United States. The vision centers opened over the past year are performing well and continue to exceed our expectations. Our business model is sound, and we are on track to meet our goal of opening a total of 10 to 12 vision centers this year. Looking ahead, we expect to open at least 12 to 15 vision centers throughout 2007. We remain focused on strategically expanding the LasikPlus footprint through the United States, while continuing to deliver high-quality results to our patients at an affordable price."

Revenues & Operating Income

Revenues grew 26% to approximately $59.3 million in 2006's third quarter from approximately $47.0 million in 2005's third quarter. Third quarter 2006 same-store revenues at vision centers located in the Untied States increased 6% over the third quarter of 2005. 44 vision centers were included in the same-store revenue count. Procedure volume increased 24% in 2006's third quarter to 42,539 from 34,187 procedures performed in 2005's third quarter. Operating income was approximately $9.9 million in 2006's third quarter compared with approximately $12.0 million in 2005's third quarter. Third quarter 2006 operating income was reduced by approximately $1.5 million as a result of the expensing of equity-based compensation.

Net Income & Earnings Per Share

Third quarter 2006 net income and earnings per share were approximately $7.2 million and $0.34 compared with approximately $7.9 million and $0.37, respectively, in the third quarter of 2005. Included in net income for the third quarter of 2006 was the after-tax cost of approximately $1.2 million, or $0.06 per diluted share, for the expensing of equity-based compensation.

Following this release, LCA's stock price increased to above $34 per share and continued to increase.

26. Throughout October, the Company, through Defendants Buckey and Joffe, stated that while they were aware of emerging technologies within the industry, it was not necessary for LCA to

upgrade any of the technology relied upon in the LasikPlus centers to maintain projected levels of customer growth, revenue and EPS expansion. Defendant Buckey, during a telephone conference with investors and analysts on October 2, 2006, in response to a question regarding implementing IntraLase technology, stated that "[t]o date we have viewed IntraLase more as a marketing tool to get at the fear factor. We're calling it a bladeless procedure, but at this point, we have no plans for their technology." In a separate telephone conference on October 24, 2006, Defendant Joffe confirmed that IntraLase had no impact on patient volume (and thus overall profitability), stating only that they were "continually evaluating all of the various technology innovations and developments, including IntraLase, but not limited to IntraLase." Joffe understood during this call the strong correlation between new technology and increased profitability, stating:

> So, in addition to technological innovations, I would also say that what could also expand the pool is if the industry could start to come together to address some of the safety and fear concerns that are holding patients back. I mean the two biggest impediments to the industry are fear and cost, and I think that there is a lot of opportunity for all the industry partners to come together to more effectively adjust some of the fear and concerns that are lingering out there among the consumer.

27. On November 22, 2006, the Company issued a press release entitled "LCA-Vision Completes Existing Share Repurchase Plan, Announces New Share Repurchase Plan and Increases Dividend." The press release stated in part:

> Steven C. Straus, LCA-Vision's chief executive officer commented, "The board's decision to authorize a new share repurchase plan and increase the quarterly dividend by 50% is a reflection of their confidence in the company's financial strength and future growth potential, and also shows their commitment to a balanced cash deployment strategy. We believe that the purchase of our common stock represents an attractive opportunity for the company and for shareholders, and is one of the best uses of our substantial cash position. The dividend increase represents the third annual increase since we first initiated a dividend in August of 2004. We are pleased to reward shareholders with some of the cash flow we are generating from our solid financial performance."

## DEFENDANTS' FALSE AND MISLEADING STATEMENTS ISSUED DURING THE CLASS PERIOD

28. On February 12, 2007, LCA issued a press release entitled "LCA-Vision Reports 26% Revenue Growth and 13% EPS Growth for the Quarter and 34% Revenue Growth and 22% EPS Growth for the Year; Company Expects 2007 EPS of $2.05 to $2.15 and Revenue Growth of 20% to 25%." The press release stated in part:

> Steven C. Straus, LCA-Vision's Chief Executive Officer, commented, "We are pleased to report another year of strong growth for LCA-Vision and LasikPlus. 2006 marks our fourth consecutive year of growth in excess of 30% in revenues, procedure volume and operating income. Our results reflect market share gains in both new and existing markets as well as our continued ability to consistently outperform the industry. We are also pleased with our fourth quarter results. We have operated in a market that has been flat-to-down for the past five quarters, and despite those odds, delivered 13% growth in earnings per diluted share, revenue growth of 26%, and a 23% increase in procedure volume. Growth in same-store revenues accelerated to 10% in the fourth quarter from 6% in the third quarter reflecting growth in word-of-mouth referrals and positive response to some of our new marketing initiatives. Based on industry sources, we believe that our market share in the U.S. grew to an estimated 15% in 2006's fourth quarter from about 12% in 2005's fourth quarter. Since we only operate in 46 U.S. markets, we believe that our market share is well over 30% in most of the markets we serve."
>
> Mr. Straus continued, "In addition to solid financial results, 2006 marked the successful opening of 10 LasikPlus vision centers, and a few weeks ago, we announced the opening of our 60th vision center in Westbury, New York. The positive demand for laser vision correction procedures at our new vision centers continues to exceed our expectations. Our continued investment in growing our center base further strengthens our operations and provides significant opportunity for future growth."
>
> "We are enthused about the growth potential for LCA-Vision/LasikPlus in 2007 and beyond," added Mr. Straus. "We operate in a highly fragmented market and our industry is still in its infancy here in the U.S. with only about 9% of the 60 million people eligible for the laser vision correction procedure treated to-date. The LasikPlus brand is built on high employee and patient satisfaction and superior shareholder returns. Our growth over the past several years reflects the strength of our people and our operations; and as the industry leader, we believe that we are in a strong position to capitalize on this huge market potential."

29. When trading opened on February 12, 2007, LCA's stock shot up on these results from $38.71 to $46.13 per share.

30. On February 27, 2007, the Company filed its 2006 Form 10-K, which included the Company's previously reported financial results. The Form 10-K also included a certification by Straus, which stated:

> I, Steven C. Straus, certify that:
>
> I have reviewed this annual report on Form 10-K of LCA-Vision Inc.;
>
> Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
>
> Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
>
> The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
>
> (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
>
> (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
>
> (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
>
> (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

> The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
>
> (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
>
> (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

31. Defendant Buckey signed a nearly identical certification included in the Form 10-K.

32. On April 18, 2007, the Company issued a press release entitled "LCA-Vision to Restate Financial Statements to Increase Deferred Revenues for Separately Priced Extended Warranties; Management comfortable with current 2007 financial guidance." The press release stated in part:

> LCA-Vision Inc., a leading provider of laser vision correction services under the LasikPlus brand, today announced it will restate financial results for 2004, 2005 and 2006 to reflect a change in revenue recognition for the Company's separately priced extended warranties.
>
> This change is expected to reduce 2006 revenues and net income by approximately $18 million and $10 million, respectively. This reflects a reduction in revenues of approximately 7 percent for the year. The proposed accounting also is expected to reduce shareholders' equity as of December 31, 2006 by approximately $30 million, of which approximately $9 million relates to periods prior to 2004. The proposed adjustment in revenue recognition is expected to increase revenues and earnings in future periods as deferred revenues are amortized back into income. There will be no change to cash provided by operating activities or to cash and cash equivalents on the balance sheet for any period affected. Management is analyzing the restatement adjustments and the estimated changes outlined above are preliminary and are subject to further review and audit.
>
> This action resulted from analysis performed following the Company's receipt of a comment letter from the Securities and Exchange Commission (SEC) pursuant to their review of our 2006 10-K. The single issue raised in this letter addressed the Company's revenue recognition policy. The Company's historical policy has been to defer revenues for separately priced extended warranties for those

> patients expected to receive treatment under the warranty. Historical data indicates that only 7% of patients elected to receive treatment under the warranty.
>
> Because LCA-Vision has offered separately priced extended warranties, it is subject to FASB Technical Bulletin 90-1. Under this Bulletin 100 percent of revenues from extended warranties are to be deferred and these deferred revenues are to be amortized back into income on a straight-line basis unless the Company has sufficient experience to indicate that the costs to provide the service will be incurred other than on a straight-line basis. The Company believes it has sufficient experience to show that future enhancements are not expected to be performed on a straight-line basis and should be amortized over seven years.
>
> "We have provided the SEC with a response to its comment letter and we look forward to resolving this issue as soon as is practical," said Steven C. Straus, LCA-Vision's Chief Executive Officer. "Since we started offering separately priced extended vision acuity plans, we have consistently applied our interpretation of the relevant accounting rules and deferred a portion of the revenue from acuity plans consistent with the percentage of patients who return to LasikPlus vision centers for enhancement procedures.
>
> "We plan to limit or eliminate the use of separately priced extended warranties in the near future," added Mr. Straus. "Therefore, we expect the impact of the restated financial statements will be to increase revenues and pretax income in future periods as the deferred revenue is amortized back into income. At present, we are comfortable with our 2007 revenue guidance growth of 20 to 25 percent compared with 2006, and our 2007 earnings per share guidance of $2.05 to $2.15."
>
> The Company's decision to restate prior-period financial statements was made by LCA-Vision management with the concurrence of the Audit Committee of its Board of Directors and its independent auditors, Ernst & Young LLP.

33. While the restatements caused LCA's stock price to decline, the stock continued to trade at artificially inflated prices as the same release included a confirmation of forecasted 2007 EPS.

34. On May 8, 2007, the Company issued a press release entitled "LCA-Vision Files Restated Financial Results." The press release stated in part:

> LCA-Vision Inc., a leading provider of laser vision correction services under the LasikPlus brand, today announced that it has filed with the Securities and Exchange Commission (SEC) an amended Annual Report on Form 10-K/A for the year ended December 31, 2006, including prior period restatements for the years 2002 to 2006. On April 18, 2007, the Company announced that it would file a Form 10-K/A for 2006 that represents the Company's view on changes in revenue recognition for its

separately priced extended warranties. The Form 10-K/A is subject to ongoing review by, and possible additional comments from, the staff of the SEC.

The effect of the restatement for 2006 was a reduction in revenues of $18.0 million and a reduction in net income of $9.9 million. The cumulative effect of the restatements for the years through 2006 was a reduction in revenues of $48.9 million and a reduction in retained earnings of $27.4 million.

* * *

Reasons for the Restatement

On March 9, 2007, LCA-Vision received a comment letter from the SEC related to a staff review of its 2006 Annual Report on Form 10-K. The single issue raised in this letter addressed the Company's revenue recognition policy regarding services provided subsequent to the initial surgical procedure. In most cases, LCA-Vision's base price laser vision correction surgery includes a one-year acuity program, which will cover the cost of post-surgical enhancements should the patient not achieve the desired visual correction during the initial procedure. In addition, LCA-Vision offers its patients the option to purchase a lifetime acuity plan. The majority of LCA-Vision patients purchase the lifetime acuity program.

The Company's historical accounting policy had been to defer revenues for separately priced extended warranties for those patients expected to receive treatment under the warranty. Historical data indicates that approximately 7% of patients received treatment under the warranty. The accounting for separately priced extended warranties is subject to Financial Accounting Standards Board (FASB) Technical Bulletin 90-1 (FTB 90-1), Accounting for Separately Priced Extended Warranty and Product Maintenance Contracts.

Following receipt of the SEC staff comment letter and upon further examination of the manner in which the Company has historically accounted for the revenues associated with the lifetime acuity program, LCA-Vision determined that its accounting for deferred revenues was not appropriate under FTB 90-1 and resulted in an overstatement of revenues. Under FTB 90-1, 100% of revenues from separately priced extended warranties are to be deferred and recognized over the life of the contract on a straight-line basis unless the Company has sufficient experience to indicate that the costs to provide the service will be incurred other than on a straight-line basis.

The Company has sufficient experience to support that future enhancements will be incurred on other than a straight-line basis. Accordingly, LCA-Vision has restated its results to reflect the deferral of revenues associated with its lifetime acuity program as a separately priced extended warranty under FTB 90-1. LCA-Vision recognized these deferred revenues in its restated results over the periods in which the future costs of performing the enhancement procedures are expected to be incurred. Because the Company's base price generally included the right to

> enhancements in the first year, LCA-Vision recognizes these deferred revenues based on historical enhancement rate patterns with amortization beginning after the first anniversary of a patient's surgical date. Under the historical pattern, approximately 51% of the deferred revenue will be recognized in the second year after the patient's initial surgery. . . .
>
> In addition to the deferral of revenues under FTB 90-1, LCA-Vision is also deferring a portion of its costs of service related to professional fees paid to the attending surgeon. Professional fees are earned when a procedure is performed. The physician receives no incremental fee for an enhancement procedure. Accordingly, a portion of the professional fee paid to the physician relates to the future enhancement procedures to be performed and qualifies for deferral under FTB 90-1 as a direct and incremental cost of the warranty contract. LCA-Vision will use the same historical experience to amortize the deferred revenue and the deferred professional fees.

35. LCA's stock price declined only briefly on this news, as the next day the Company issued a release affirming 2007 guidance entitled "LCA-Vision Reports 18% Revenue Growth for the 2007 First Quarter; Company Affirms 2007 Guidance." The press release stated in part:

> LCA-Vision Inc., a leading provider of laser vision correction services under the LasikPlus brand, today announced financial and operational results for the three months ended March 31, 2007. All 2006 first quarter revenue and net income figures reported today reflect the restated financial results contained in LCA-Vision's Form 10-K/A for the year ended December 31, 2006, filed with the Securities and Exchange Commission (SEC) on May 8, 2007. As previously announced, the Form 10-K/A is subject to ongoing review by, and possible additional comments from, the staff of the SEC.
>
> * * *
>
> Steven C. Straus, LCA-Vision's Chief Executive Officer, commented, "We are pleased to report 2007 first quarter revenue growth of 18%, continued gains in market share in both new and existing markets and continued ability to consistently outperform industry growth rates. For the quarter, we grew revenues to more than $78 million, ***and increased procedure volume 11% to more than 59,000***. Same-store revenues were up 5%, net income was up 16% and earnings per diluted share grew 23%. We achieved this growth in an industry where procedure volume has been flat-to-down for the past six quarters."
>
> Mr. Straus continued, "We successfully opened four LasikPlus vision centers in the first quarter, all in new markets. We now operate a total of 63 vision centers in 48 markets in 29 states. We plan to open eight to 11 additional centers this year. Our continued investment in expanding our store base, which also includes relocation and/or renovations of older locations, further strengthens our operations and provides significant opportunity for future growth.

* * *

Net Income & Earnings Per Share

First quarter 2007 earnings per diluted share increased 23% to $0.54 from $0.44 in the first quarter of 2006. First quarter 2007 net income increased 16% to approximately $10.9 million from approximately $9.4 million in the first quarter of 2006.

* * *

Cash Position

Net cash provided by operating activities increased 17% in the first quarter of 2007 to approximately $28.5 million from approximately $24.3 million in the first quarter of 2006. Cash and short-term investments increased to approximately $123.1 million as of March 31, 2007, from approximately $98.1 million as of December 31, 2006.

Outlook

LCA-Vision affirmed its previous guidance for the 2007 full year. The company currently expects earnings per diluted share for the full-year of 2007 to be in the range of $2.05 to $2.15 with revenue growth between 20% and 25%, compared to the originally reported 2006 revenue of $256.9 million. We are currently testing the use of bundled warranties instead of separately priced extended warranties. This guidance assumes that we significantly reduce or eliminate the use of separately priced extended warranties in the second half of 2007, and that the effect of deferring revenues for separately priced extended warranties in the first half of 2007 is offset by additional revenues in the second half of 2007 as previously deferred revenues get amortized back into revenues. For the second quarter of 2007, we expect our marketing spending to be approximately $17 million. For the full year 2007, we expect to spend approximately $67 million on marketing and advertising. We continue to seek more effective and efficient methods of patient acquisition. As previously disclosed, the company expects to open 12 to 15 new vision centers throughout 2007. In the first half of 2007, center openings will focus on new markets. After evaluating the results of the additional locations opened last year in Houston, Minneapolis and Chicago, the company will consider additional locations in existing markets.

36. On May 10, 2007, the Company filed its Form 10-Q for the first quarter of 2007, which included the same financial results as previously reported. The May 10, 2007 Form 10-Q reported a procedure volume of 59,101, an increase of 11% from the first quarter of 2006. This increase in procedure volume included procedures performed at the Company's 10 newly opened

vision centers. The Form 10-Q also contained virtually identical certifications by Straus and Buckey as contained in LCA's Form 10-K for 2006, as cited above.

37. On May 23, 2007, LCA attended the JMP Securities Research Conference. During that investor presentation, LCA affirmed its EPS guidance of $2.05-$2.15 for 2007.

38. On June 6, 2007, LCA made an investor presentation at the FTN Midwest Healthcare Conference at the Four Seasons Hotel in New York, New York, which was also webcast. During that presentation, defendant Buckey once again confirmed the 2007 EPS guidance of $2.05-$2.15.

39. On June 21, 2007, LCA made another investor presentation at the William Blair 27th Annual Growth Stock Conference. During that investor presentation, LCA again confirmed EPS guidance of $2.05-$2.15 for 2007.

40. On June 26, 2007, LCA made yet another investor presentation at the Jefferies Healthcare Conference. During that investor presentation, LCA once again confirmed its EPS guidance of $2.05-$2.15 for 2007.

41. On July 30, 2007, LCA stock closed at $42.99 per share. Then, on July 31, 2007, the Company issued a press release entitled "LCA-Vision Reports 16% Revenue Growth for the Second Quarter of 2007; Full-Year 2007 Financial Guidance Revised." The press release stated in part:

> LCA-Vision Inc., a leading provider of laser vision correction services under the Lasik*Plus* brand, today announced financial and operational results for the three months and six months ended June 30, 2007.
>
> Second Quarter 2007 Financial and Operational Results
>
> * * *
>
> "In the second quarter of 2007, we ***reported 16% revenue growth with a modest increase in procedure volume***," said Steven C. Straus, LCA-Vision's Chief Executive Officer. "We are not satisfied with our financial and operational results, primarily ***due to the decline in same-store procedure*** volume and rising patient acquisition costs. We expect several factors to re-accelerate earnings and revenue growth in the second half of this year. Among these, we are implementing a number of major marketing initiatives that we believe will provide improved performance in

the second half of this year and into 2008, with the largest impact expected in the first quarter of 2008."

"In some of our more established markets, we are remodeling or relocating our LasikPlus vision centers with an aim toward improving same-store performance. So far this year, we have remodeled nine vision centers and have plans to remodel five more, and will relocate two vision centers by the end of this year," added Mr. Straus. "We also expect to add new managed care provider agreements in the second half of this year. These new provider agreements should drive incremental procedure volume in existing markets and help launch our targeted new markets."

Mr. Straus continued, "Opening new vision centers is a component of our future growth and profitability. During the first six months of 2007, we opened nine LasikPlus vision centers compared with three openings in the first six months of 2006. Earlier this month, we announced the opening of a LasikPlus vision center in Fresno, California. Year-to-date, we have opened 10 new vision centers, which represents a 17% increase in our vision center base since December 31, 2006. We are on track to meet our goal of opening a total of 12 to 15 vision centers this year, and remain focused on strategically expanding the LasikPlus footprint throughout the United States, while continuing to deliver high-quality results to our patients at an affordable price."

Revenues and Operating Income

Revenues grew 16% to $69.7 million in 2007's second quarter from $60.3 million in 2006's second quarter. Total procedure volume increased 3% in 2007's second quarter to 48,668 from 47,308 procedures performed in 2006's second quarter. In the second quarter of 2007, same-store procedure volume at vision centers located in the United States decreased by approximately 8% from the second quarter of 2006. Operating income was $10.0 million in 2007's second quarter compared with $12.4 million in 2006's second quarter. Operating income for the second quarter of 2007 was lower than the second quarter of 2006 primarily as a result of 16 more vision centers in operation as of June 30, 2007, compared with June 30, 2006, and higher marketing expenditures to support new and existing markets.

Net Income and Earnings Per Share

Second quarter 2007 net income and earnings per diluted share were $7.4 million and $0.36, compared with $8.0 million and $0.37 in the second quarter of 2006.

Effect of the Change in Our Accounting for Deferred Revenues on Financial Results

In the second quarter of 2007, LCA-Vision deferred $7.9 million of revenue from the sale of separately priced extended warranties. The amortization of deferred revenue from prior periods was $7.0 million in the most recent quarter. In the second quarter of 2006, the amount of deferred revenue was $9.9 million and the amortization of deferred revenue from prior periods was $4.7 million. An analysis of

the effect of changes in deferred revenues and deferred professional fees on revenues and operating income is included in the attached table "Effect of the Change in Our Accounting for Deferred Revenues on Financial Results." Management utilizes this information as a means of measuring performance that adjusts for the non-cash impact of the accounting for separately priced extended warranties and believes that including this additional disclosure is meaningful to investors for the same reason.

On June 15, 2007 LCA-Vision eliminated the use of separately priced extended warranties. As a result of the new pricing strategy, the company will no longer defer revenues for its warranties, but will continue to amortize prior revenues and professional fees that were deferred as of June 30, 2007. The company expects the amortization of deferred revenues in the second half of 2007 to be $14.5 million and the net effect to reported earnings per diluted share to be about $0.21 for the full-year of 2007.

* * *

Outlook

LCA-Vision is revising its earnings and revenue guidance for the full-year of 2007. The company now expects earnings per diluted share to be in the range of $1.90 to $2.00, and revenues between $308.0 million to $315.0 million, which includes the impact of deferred revenues. For the third quarter of 2007, marketing spend is expected to be approximately $17.5 million.

42. After these results were issued, on July 31, 2007, LCA's stock collapsed to close at $35.51 per share, a decline of 17%, on volume of 3.5 million shares. The stock dropped further on August 1, 2007 to $33.40 per share.

43. As The Motley Fool Web site reported, investors were "blindsided":

Egads, was that ever bad!

In last week's Foolish Forecast for Q2 earnings at LCA-Vision, I was puzzled that analysts predicted both double-digit sales growth and a double-digit earnings decline for the LASIK specialist. It just didn't make sense, especially in light of CEO Steven Straus's recent assurance that the company was on track to achieve 20%-plus sales growth and better than 50% profit growth this year. Something was amiss.

And how. Reviewing Tuesday's results, it appears that the analysts ultimately weren't pessimistic ***enough***. The numbers were simply abysmal:

- Sales rose only 6% (or 16%, based on management's restatement of Q2 2006 results).

- Procedure volume increased an anemic 3%, with all of the growth coming from new store openings. Existing stores dragged down the final number with an 8% drop in same-store sales.

- Per-share profits fell by a penny to $0.36.

* * *

The good news

Even the good news was bad at LCA this quarter. Straus pointed out that while profits were down, cash flow was up 14%. Good news? Not really. The 14% number was for year-to-date cash flow, and it relied heavily on last quarter's 17% growth. In Q2, cash flow actually performed worse than GAAP profits – down 35% year over year from last year's $8 million.

The not-yet news

Putting it all together, LCA decided to lower its forward earnings guidance by roughly 7%, to a midpoint of $1.95 per share. (The last time we checked, the midpoint was $2.10.) How confident should you be that LCA will meet its latest and less-than-greatest target?

Well, LCA has earned $0.90 per share already, but the year's more than half over. So unless management fulfills its promise to reenergize growth next quarter, I'd put the likelihood of hitting the latest earnings target somewhere south of 50%.

44. On July 31, 2007, the Company filed the Company filed its Form 10-Q for the second quarter of 2007, which included the same financial results as previously reported. The July 31, 2007, Form 10-Q reported a procedure volume of 48,668, an increase of 3% from the first quarter of 2006. Further, the Company admitted that "[o]ur strongest quarter in terms of procedures performed historically has been the first quarter of the year. We believe this is related to a number of factors, including the availability of funds under typical employer medical flexible spending programs and the general effect of the New Year season." The Form 10-Q also contained virtually identical certifications by Straus and Buckey as contained in LCA's Form 10-K for 2006, as cited above.

45. On October 30, 2007, LCA issued a press release publicly announcing for the first time, "plans for a nationwide rollout of Advanced Medical Optics' IntraLase® femtosecond

technology at its LasikPlus vision centers throughout the United States." The Company reported that it expected "to place InterLase technology at approximately eight locations per month and that the installation will be completed within the first half of 2008." Thus, within a year of affirming that new technology was not necessary to maintain growth and profitability levels, the Company suddenly adopted technology, although it now maintained technological advances were necessary solely for "clinical benefits."

46. Accompanying the announcement that the Company would begin utilizing new technology, on October 30, 2007, the Company, through an additional press release, made a second admission—that it was unable to predict its fourth quarter earnings per diluted share, and ***was suspending financial guidance indefinitely.*** The press release provide in relevant part:

> LCA, a leading provider of laser vision correction services under the LasikPlus brand, today announced financial and operational results for the three months and nine months ended September 30, 2007.
>
> Third Quarter Financial and Operational Results (all comparisons are versus the third quarter of 2006)
>
> - Revenues increased 34% to $74.6 million from $55.8 million; adjusted revenue increased 13% to $66.9 million from $59.3 million.
> - Same-store revenue increased 20%; adjusted same-store revenue was essentially flat.
> - Procedure volume increased 5% from 44,547 to 42, 539.
> - Operating income increased 107% to $14.1 million from $6.8 million; adjusted operating income decreased 28% to $7.2 million from $9.9 million.
> - Net income and earnings per diluted share were $10.0 million and $0.51, compared with $5.3 million and $0.25.
> - Opened two new Lasik*Plus* centers in Fresno, California and Boise, Idaho.
>
> * * *

LCA-Vision is providing adjusted revenue and operating income to investors as a means of measuring performance that adjusts for the non-cash impact of the accounting for separately priced extended warranties. A reconciliation of revenue and operating income as reported in accordance with Generally Accepted Accounting Principles (GAAP) is provided on the last page of this news release. Management utilizes this information as a means of measuring performance that adjusts for the non-cash impact of the accounting for separately priced extended warranties. Management believes this information is more reflective of operating performance, and that including this additional disclosure is meaningful to investors for the same reason.

Commenting on the company's financial and operational results, Steve Straus, LCA-Vision's Chief Executive Officer, said, "Our ability to obtain a higher average price per procedure during the quarter favorably offset weaker same-store procedure volume as we continue to face headwinds due to softness in consumer discretionary spending and tightening credit markets."

Mr. Straus continued, "Third quarter marketing spending increased 33% over last year. The increase in the number of pre-operative eye exams scheduled during the quarter was consistent with the increase in growth in marketing expenditures, which indicates that there remains a significant amount of appeal to laser vision correction and LasikPlus. However, a more cautious consumer resulted in slower growth in procedure volume. During the quarter, we commissioned a research firm to survey consumers who did not attend their pre-operative eye exam to find out why they missed their appointment. The survey results indicated these consumers were not ready to commit to getting the procedure performed due to convenience and cost, but they were still interested in LasikPlus. We are working diligently to reach out to these consumers so they will return to LasikPlus when they are ready to have the procedure performed.

* * *

"Earlier today, we announced plans to rollout the IntraLase femtosecond technology in our LasikPlus vision centers throughout the United States," added Mr. Straus. "Including 18 units that were installed over the past month, we currently offer IntraLase at 26 of our LasikPlus vision centers. We expect to add approximately eight locations per month, and to complete the installation within the first half of 2008. The implementation and national rollout of IntraLase in our LasikPlus vision centers supports our commitment to offer patients advanced technological choices at an affordable price. In addition to increasing our average price per procedure and driving incremental revenue, we believe that the IntraLase technology may also help to reverse the trend toward more surface ablation treatments."

* * *

Outlook

> Discussing the firm's outlook, Mr. Straus said, "While we remain confident in the company's long-term growth prospects, in the near-term we face an uncertain business environment. Notably, ***the percentage of pre-operative eye exams we are able to convert into treated patients has declined and is impacting our ability to accurately forecast conversion rates.*** At the same time, macroeconomic trends and consumer sentiment are weakening, which gives us concern for the short-term. Given these trends and uncertainties, ***we now expect that fourth quarter 2007 earnings per diluted share will be significantly below the $0.27 we reported in the fourth quarter of 2006, and we are suspending revenue guidance.*** We remain committed to opening a total of 12 to 15 vision centers in 2007. We expect to invest approximately $16.5 million on marketing in the fourth quarter. We will expand the use of the IntraLase technology in the coming months, which should help increase average procedure price."

47. The market reaction to this news was swift and severe. On October 30, 2007, the Company's stock plummeted more than $9.00 per share, from a previous day close of $28.11 to $19.10. $180.7 million in market value of the Company's stock had been erased.

48. Investors were provided additional information through an article published by the Associated Press October 30, 2007 discussing LCA's dismal performance. This article stated in part:

> Shares of LCA-Vision, Inc. plummeted to a new 52-week low following a fourth quarter profit warning, after its chief executive cited disappointing procedure volumes and the weakening economy's effect on consumer sentiment.
>
> The eye-related services provider's stock fell $9.01, or 32.1% to close at $19.10 Tuesday, having hit an annual low of $18.77 earlier in the day. Over the past year, the stock has traded between $26.60 and $50.69.
>
> LCA-Vision, Inc., which offers laser-vision correction services under the LasikPlus brand, predicted earnings will decline significantly in the fourth quarter, citing an uncertain near-term business outlook. LCA-Vision also suspended its revenue guidance. Third-quarter earnings doubled but revenue fell short of Wall Street forecasts.
>
> "While we continue to manage and grow the business, we're not pleased with our procedure volume growth and operation results," said Chief Executive Steve Straus in a conference call.

Strauss said the percentage of preoperative eye exams the company is able to convert into treated patients has declined, which is hurting LCA-Vision's ability to forecast the number of appointments. Straus also said the company is concerned by weakening macroeconomic trends and consumer sentiment.

49. Reuters, another financial commentator, reported in part:

LCA-Vision, Inc. on Tuesday forecast fourth-quarter profit below market view and suspended its revenue outlook, citing a decline in consumer spending, sending shares tumbling to a two year low.

The provider of laser-based vision correction services said it has been struggling with softness in consumer discretionary spending and tightening credit markets, which also hurt the number of procedures performed per outlet.

"It appears that in a tougher consumer cycle...marketing yields are declining (and) near-term EPS visibility is impaired," Raymond James analyst John Ransom said in a research note.

Ransom cut his rating on the stock to "market perform" from "outperform."

For the fourth quarter, the company expects earnings to be significantly below the 27 cents a share it recorded a year ago. Analysts were expecting 50 cents a share, according to Reuters Estimates.

In its statement, Cincinnati-based LCA said the increase in the number of pre-operative eye exams scheduled during the third quarter was consistent with its 33 percent increase in marketing spending.

However, cautious consumer spending resulted in slower growth in converting those exams into procedure volume, the company said, adding that the decline in quarterly same-store procedure volume was offset by a higher average price per procedure.

Net income in the third quarter nearly doubled to $10 million, or 51 cents a share, while revenue jumped 34 percent to $74.6 million. Analysts were expecting a profit of 49 cents a share, on revenue of $78 million.

LCA shares dropped as much as 33 percent in intraday trade, and were trading at $19.00 in the afternoon trade on the Nasdaq. The stock has now lost more than 43 percent of its value since the beginning of the year.

50. On October 31, 2007, the market continued to digest the severity of LCA's previously undisclosed problems. The stock fell by more than 10%, from $19.10 to a close of $17.07. During

intraday trading, the stock reached a 52 week low of $16.90—off from highs of $50.69 during the Class Period.

51. The full impact of LCA's problems was not absorbed by the market until November 2, 2007. By that time, the stock had dropped to a trading-day low of $15.41, off almost 70% from its class period high of $50.56.

52. The true facts, which were known by the defendants but concealed from the investing public during the Class Period, were as follows:

(a) The Company lacked requisite internal controls, and, as a result, the Company's projections and reported results issued during the Class Period were based upon defective assumptions about the Company's marketing budget and deferred revenue;

(b) The Company knew that its revenues were driven almost entirely by the number of procedures performed in its vision centers during the first quarter of the each year and that the Company's existing stores (in operation for over 12 months) were not showing growth and any overall growth was being derived from new store openings. As a result, the Company's projections issued during the Class Period about its forecasted 2007 EPS were at a minimum reckless.

(c) The Company did not have an effective marketing strategy and mix to target consumers and drive existing store sales. In fact, the Company's marketing was so ineffective it resorted to studying consumers preferences to attempt to discern why preoperative eye exams were not translating into surgical procedures, treated patients, and revenue for the Company;

(d) The Company did not possess the technological advancements necessary to compete in the marketplace and attract consumers at the levels it needed to meet its earnings per share guidance and Wall Street estimates. The Company did not publicly acknowledge its need to rollout the IntraLase femtosecond technology until it cut fourth quarter earnings per share estimates

and suspended guidance. As a result, the Company's projections issued during the Class Period about its forecasted 2007 EPS were at a minimum reckless.

53. As a result of defendants' false statements, LCA's stock price traded at inflated levels during the Class Period. However, after the above revelations seeped into the market, the Company's shares were hammered by massive sales, sending them down more than 34% from their Class Period high.

## LCA'S FALSE FINANCIAL REPORTING DURING THE CLASS PERIOD

54. In order to inflate the price of LCA stock, defendants ignored the Company's historical financial results and recklessly informed the investing public that it expected to achieve EPS of $2.05-$2.15 for 2007.

55. The results and projections issued during the Class Period were included in Forms 10-Q and a Form 10-K filed with the SEC. The results were also included in press releases and investor presentations disseminated to the public.

56. From at least October 24, 2006, defendants knew that LCA was not achieving the level of same-store revenue growth it had projected, that its marketing efforts were ineffective and that it would be increasing its patient acquisition costs. Despite this knowledge, on February 12, 2007, defendants provided EPS guidance of $2.05-$2.15. Defendants continued to reaffirm this guidance on April 18, 2007, when the Company announced the restatement of its 2004-2006 financial statements. Defendants affirmed their guidance on: May 9th, May 23rd, June 6th, June 21st, and June 26th. On July 31, 2007, LCA announced that it was lowering EPS guidance from $2.05-$2.15 to $1.90-$2.00. On October 30, 2007, LCA announced that it would not be able to meet fourth quarter (or year) EPS guidance, and suspended guidance indefinitely.

57. A strong inference of scienter arises by virtue of the fact that:

(a) In the Company's Form 10-Q filed with the SEC for the quarter ending September 30, 2006, the Company reported a 26% increase in revenue compared to the third quarter of 2005; however, only 6% of that increase was attributed to vision centers open for at least 12 months. The Company recognized the revenue-generating deficiency of the existing vision centers and drastically increased its marketing expenses in existing markets. The Company reported that marketing and advertising expenses increased by 61%. The Company acknowledged that its "marketing and advertising expenses in the third quarter of 2006 were less effective than anticipated."

(b) Similarly, in the Company's Form 10-Q filed with the SEC for the quarter ending March 31, 2007, the Company reported an 18% increase in revenue compared to the first quarter of 2006; however, only 5% of that increase was attributed to vision centers open for at least 12 months. The Company recognized the revenue-generating deficiency of the existing vision centers and once again drastically increased its marketing expenses in existing markets. The Company reported that marketing and advertising expenses increased by 51%, consuming 22% of the Company's first quarter revenue. The Company represented that the increase in marketing costs was primarily related to, among other things, "spending in existing markets to continue to drive traffic." The Company further represented that it was continuing to work to develop revised, more efficient marketing techniques.

(c) In the Company's Form 10-Q filed with the SEC for the quarter ending June 30, 2007, the Company reported a 16% increase in revenue compared to the second quarter of 2006 and a 3% increase in procedure volume; however, procedure volume in vision centers open for at least 12 months actually decreased by 8%. The Company recognized the volume losses in the existing vision centers and continued to increase its marketing expenses. The Company reported that

marketing and advertising expenses increased by 38%, now consuming 23% of the Company's second quarter revenue.

58. On July 31, 2007, the Company announced lower EPS guidance for 2007. Defendant Straus, the Company's CEO, reported the decline in the Company's expected EPS to a decline in same-store procedures. A decline which, unless the Company was reckless, was known and should have been disclosed to the investing public, along with a discussion of the impact on its expected 2007 EPS long before July 30, 2007. The Company admitted that it knew throughout the Class Period that historically it had only experienced increases in procedure volume in the first quarter of each year. This, coupled with the fact that the Company was only experiencing increased volume and revenue in newly opened vision centers, means that the Company knew that its growth in procedure volume and revenues was only occurring in the first quarter of each year – *i.e* the first quarter of 2007. This conclusion is only bolstered by the fact that, a mere two months later, the Company suspended guidance altogether.

59. Further, the undisclosed adverse information concealed by defendants during the Class Period is the type of information which, because of SEC regulations, regulations of the national stock exchanges and customary business practice, is expected by investors and securities analysts to be disclosed and is known by corporate officials and their legal and financial advisors to be the type of information which is expected to be and must be disclosed.

## LOSS CAUSATION/ECONOMIC LOSS

60. By misrepresenting LCA's financial projections, the defendants presented a misleading picture of the Company's business and prospects. Thus, instead of truthfully disclosing during the Class Period that LCA's business was not as healthy as represented, defendants falsely represented that LCA's business was growing.

61. These claims of profitability caused and maintained the artificial inflation in LCA's stock price throughout the Class Period and until the truth about its future earnings was revealed to the market.

62. Defendants' false and misleading statements had the intended effect and caused LCA stock to trade at artificially inflated levels throughout the Class Period, reaching as high as $50.56 per share.

63. In April 2007, LCA disclosed its restatement but also assured investors that earnings were still on track for EPS of $2.05 to $2.15 per share in 2007. On July 31, 2007, defendants were forced to publicly disclose that LCA had not only improperly reported revenue in past years, but that 2007 EPS would be much lower than prior estimates, causing its stock to drop to $35.51 per share. Thereafter, on October 30, 2007, the Company was forced to disclose that LCA could not accurately predict 2007 EPS ***at all***, and suspended guidance altogether.

64. As a direct result of defendants' admissions and the public revelations regarding the truth about LCA's profitability and its actual business prospects going forward, LCA's stock price plummeted 17%, falling from $42.99 per share on July 30, 2007 to $35.51 per share the following day, a one day decline of $7.48 per share. This drop removed some of the inflation from LCA's stock price, causing real economic loss to investors who had purchased the stock during the Class Period.

65. As a direct result of defendants subsequent admissions and the public revelations regarding the Company's inability to meet, or even predict earnings per share guidance, LCA's stock price plummeted 32%, falling from $28.11 on October 29, 2007 to $19.10 the following day, a one day decline of $9.01. The stock eventually traded as low as $15.41 per share on November 2, 2007.

These drops removed the additional inflation from LCA's stock price, causing real economic loss to investors who purchased the stock during the Class Period.

## COUNT I

### For Violation of §10(b) of the 1934 Act and Rule 10b-5 Against All Defendants

66. Plaintiff incorporates ¶¶1-65 by reference.

67. During the Class Period, defendants disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

68. Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that they:

(a) employed devices, schemes and artifices to defraud;

(b) made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) engaged in acts, practices and a course of business that operated as a fraud or deceit upon plaintiff and others similarly situated in connection with their purchases of LCA common stock during the Class Period.

69. Plaintiff and the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for LCA common stock. Plaintiff and the Class would not have purchased LCA common stock at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by defendants' misleading statements.

## COUNT II

### For Violation of §20(a) of the 1934 Act Against All Defendants

70. Plaintiff incorporates ¶¶1-69 by reference.

71. The Individual Defendants acted as controlling persons of LCA within the meaning of §20(a) of the 1934 Act. By reason of their positions with the Company, and their ownership of LCA stock, the Individual Defendants had the power and authority to cause LCA to engage in the wrongful conduct complained of herein. LCA controlled the Individual Defendants and all of its employees. By reason of such conduct, defendants are liable pursuant to §20(a) of the 1934 Act.

## CLASS ACTION ALLEGATIONS

72. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased or otherwise acquired LCA common stock during the Class Period (the "Class"). Excluded from the Class are defendants.

73. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. LCA has over 20 million shares of stock outstanding, owned by hundreds if not thousands of persons.

74. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class which predominate over questions which may affect individual Class members include:

(a) whether the 1934 Act was violated by defendants;

(b) whether defendants omitted and/or misrepresented material facts;

(c) whether defendants' statements omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;

(d) whether defendants knew or deliberately disregarded that their statements were false and misleading;

(e) whether the price of LCA's common stock was artificially inflated; and

(f) the extent of damage sustained by Class members and the appropriate measure of damages.

75. Plaintiff's claims are typical of those of the Class because plaintiff and the Class sustained damages from defendants' wrongful conduct.

76. Plaintiff will adequately protect the interests of the Class and has retained counsel who are experienced in class action securities litigation. Plaintiff has no interests which conflict with those of the Class.

77. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

## PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for judgment as follows:

A. Declaring this action to be a proper class action pursuant to Fed.R.Civ.P. 23;

B. Awarding plaintiff and the members of the Class damages, including interest;

C. Awarding plaintiff's reasonable costs and attorneys' fees; and

D. Awarding such equitable/injunctive or other relief as the Court may deem just and proper.

DATED: November 8, 2007

Respectfully submitted,

STRAUSS & TROY

Richard S. Wayne (0022390)
Thomas P. Glass (0062382)
Matthew R. Chasar (0075191)
The Federal Reserve Building
150 E. Fourth Street
Cincinnati, OH 45202-4018
Telephone: 513/621-2120
513/629-9426 (fax)
E-mail: (rswayne@strausstroy.com)
E-mail: (tpglass@strausstroy.com)
E-mail: (mrchasar@strausstroy.com)

*Attorneys for Plaintiff*

**JURY DEMAND**

Plaintiff demands a trial by jury.

Richard S. Wayne (0022390)

1396146_1.DOC

# CERTIFICATION
## PURSUANT TO FEDERAL SECURITIES LAWS

I, DIANE B. CALLAHAN, hereby certify that the following is true and correct to the best of my knowledge, information and belief:

1. I have reviewed the Complaint filed against LCA-VISION.

2. I did not acquire/purchase the security that is the subject of this action at the direction of counsel or in order to participate in this private action.

3. I am willing to serve as a representative party on behalf of the class, including providing testimony at deposition and trial, if appropriate

4. To the best of my current knowledge, the following are all my transactions in LCA-Vision securities during the period from February 12, 2007 and July 30, 2007 (the "Class Period"):

| NUMBER OF SHARES | TRANSACTION (Buy/Sell) | PRICE Per Share | DATE Of Transaction |
|---|---|---|---|
| 215 | BOUGHT | 45.96 | 2/22/07 |
| | | | |
| | | | |
| | | | |

5. During the last three years, I have not served or sought to serve as a class representative in any case brought under the federal securities laws.

6. I have not been promised any payment for serving as a representative party on behalf of the class beyond my *pro rata* share of any recovery, except as ordered or approved by the Court, including any award for reasonable costs and expenses (including lost wages) directly relating to the representation of the class.

Signed under the penalties of perjury this 2nd day of October, 2007.

Diane B Callahan

607104_1.DOC